



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

February 20, 2003

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2003-1128

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176790.

The Texas Department of Public Safety (the "department") received a request for information relating to "the Health Department decision regarding" a named individual. You inform us that the department has released most of the requested information. You state that Texas driver's license numbers were redacted from that information in accordance with the previous determination that we issued to the department in Open Records Letter No. 2001-2047 (2001). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (delineating circumstances under which attorney general decision constitutes previous determination for purposes of Gov't Code § 552.301). You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that another statute makes confidential. You raise section 552.101 in conjunction with section 12.097 of the Health and Safety Code. Section 12.097 provides as follows:

- (a) All records, reports, and testimony relating to the medical condition of an applicant or license holder:

(1) are for the confidential use of the medical advisory board [of the Texas Health Department], a panel, or the Department of Public Safety of the State of Texas;

(2) are privileged information; and

(3) may not be disclosed to any person or used as evidence in a trial except as provided by Subsection (b).

(b) In a subsequent proceeding under Subchapter N, Chapter 521, Transportation Code,¹ the medical standards division [of the Texas Department of Health] may provide a copy of the report of the medical advisory board or panel and a medical record or report relating to an applicant or license holder to:

(1) the Department of Public Safety of the State of Texas;

(2) the applicant or license holder; and

(3) the officer who presides at the hearing.

Health & Safety Code § 12.097 (footnote in original). You indicate that the submitted information relates to a license holder's medical condition and thus is encompassed by section 12.097. You state that the requestor does not appear to be among the individuals or entities that are entitled to receive the submitted information under section 12.097. Based on your representations and our review of the information at issue, we conclude that the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 12.097(a) of the Health and Safety Code. *But see* Health & Safety Code § 12.097(b) (authorizing Department of Health's medical standards division to release records to, *inter alia*, license holder in subsequent proceeding under subchapter N, chapter 521, Transportation Code).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

¹V.T.C.A., Transportation Code § 521.291 et seq.

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

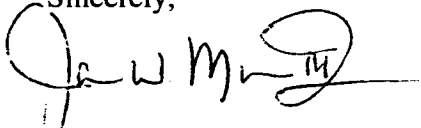
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'J W Morris III', with a stylized flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 176790

Enc: Submitted documents

c: Ms. Pat Vosberg
1660 Staree Lane
Fort Worth, Texas 76179
(w/o enclosures)